

SECOND REGULAR SESSION

SENATE BILL NO. 1263

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR DOLAN.

Read 1st time February 16, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

4570S.01I

AN ACT

To repeal sections 407.730 and 407.735, RSMo, and to enact in lieu thereof two new sections relating to car rental insurance, with a penalty provision.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 407.730 and 407.735, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 407.730 and 407.735, to read as follows:

407.730. As used in sections 407.730 to 407.748, the following terms mean:

(1) **"Authorized driver":**

(a) **The renter;**

(b) **The renter's spouse if the spouse is a licensed driver and satisfies the car rental company's minimum age requirement;**

(c) **Any person expressly listed by the car rental company on the renter's contract as an authorized driver;**

(2) **"Blackout date", any date on which an advertised price is totally unavailable to the public;**

(3) **"Car rental company", any person or entity in the business of renting private passenger vehicles to the public;**

[(2)] (4) **"Clear and conspicuous", that the statement, representation or term being disclosed is of such size, color contrast, and audibility and is so presented as to be readily noticed and understood by the person to whom it is being disclosed. All language and terms should be used in accordance with their common or ordinary usage and meaning;**

[(3)] (5) **"Collision damage waiver", any product a consumer purchases from a car rental company in order to waive all or part of his liability in the event of a collision, other damage to, or loss due to theft of, a rental vehicle;**

[(4)] (6) **"Limited time availability", that the advertised rental price is only available**

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

for a specific period of time or that the price is not available during certain blackout periods;

[(5)] (7) "Material restriction", a restriction, limitation or other requirement which significantly affects the price of, use of, or a consumer's financial responsibility for a rental car;

[(6)] (8) "Mandatory charge", any charge, fee, or surcharge consumers must generally pay in order to obtain or operate a rental vehicle;

(9) "Optional car rental insurance", products and services that are offered in connection with and incidental to the rental of a motor vehicle under subdivision (10) of subsection 1 of section 375.786, RSMo. This definition of optional car rental insurance or any other definition of insurance shall not include the car rental company's agreement to waive its right of indemnity against the renter for damages to the rental vehicle;

[(7)] (10) "Advertisement", oral, written, graphic or pictorial statements made in the course of solicitation of business including, without limitation, any statement or representation made in a newspaper, magazine, **the Internet**, or other publication, or contained in any notice, sign, poster, display, circular, pamphlet, or letter which may collectively be called "print advertisements", or on radio or television, which may be referred to as "broadcast commercials".

407.735. 1. Any business practices utilized by car rental companies in furtherance of their business of renting vehicles to the public shall be nondeceptive, fair and shall not be unconscionable.

2. Any collision damage waiver product offered for sale to the public shall not contain any provisions that are deceptive, unfair or unconscionable. It is deceptive, unfair, and unconscionable to require a consumer to assume absolute liability for damage or loss up to the total value of a rental vehicle regardless of fault as a condition of the rental agreement, and then not include as part of any collision damage waiver product, a waiver of liability for any damage or loss which occurs as a result of the consumer's ordinary negligence, except where:

(1) The damage is caused intentionally by an authorized driver or as a result of his willful and wanton misconduct;

(2) The damage arises out of the authorized driver's operation of the vehicle while intoxicated or under the influence of any illegal or unauthorized drug;

(3) The rental transaction is based on fraudulent information supplied by the renter;

(4) The damage arises out of the use of the vehicle while committing or otherwise engaged in a criminal act in which the automobile usage is substantially related to the nature of the criminal activity;

(5) The damage arises out of the use of the vehicle to carry persons or property for hire;

(6) The damage occurs while the vehicle is operated by a person other than an authorized driver[. For the purposes of this subsection, "authorized driver" means the person to whom the vehicle is rented; the renter's spouse or other family members who are licensed drivers and satisfy the rental company's minimum age requirement; the renter's employer or co-worker if they are engaged in business activity with the person to whom the vehicle is rented, are licensed drivers, and satisfy the rental company's minimum age requirement; any person who operates the vehicle during an emergency situation or while parking the vehicle at a commercial establishment; and any person expressly listed by the rental company on the rental agreement as an authorized driver] **as defined in section 407.730;**

(7) The damage arises out of the use of the vehicle outside of the United States unless such use is specifically authorized by the rental agreement;

(8) Towing or pushing anything or if operation of the vehicle on an unpaved road has resulted in damage or loss which is a direct result of the road or driving conditions;

(9) Loss due to the theft of the rental vehicle. However, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the **car** rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within twenty-four hours of learning of the theft and reasonably cooperates with the **car** rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the **car** rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

3. Any claim resulting from damage to or loss of a rental vehicle shall be reasonably and rationally related to the actual loss incurred. The **car** rental company shall not assert or collect any claim for physical or mechanical damage to or loss of a rental vehicle which exceeds: the actual cash value of the vehicle immediately before the loss less any proceeds from the vehicle's disposal after the loss, or the actual cost to repair the damaged vehicle including all discounts or price reductions, whichever is less. Such claim shall be based on an estimate of damage or repair invoice made by an independent appraisal company, an insurance company, or a repair facility that completed or would complete the repairs. A **car** rental company's charge for loss of use shall not exceed a reasonable estimate of the actual income lost.

4. It is a deceptive and unfair practice for a car rental company or employee to misrepresent any element of a rental agreement transaction or to fail to disclose to consumers all material facts and restrictions applicable to the rental of a vehicle or in the sale of optional products or services. The company shall disclose the extent of the consumer's

liability for the vehicle and the price for collision damage waiver, **optional car rental insurance, or other optional products**, and applicable mileage limitations and charges. **A car rental company shall not require the purchase of damage waiver, optional car rental insurance, or any other optional products.** No car rental company shall sell or offer to sell a consumer a collision damage waiver, **optional car rental insurance, or any other optional** product as a part of the rental agreement unless the car rental company first provides the consumer with the following written notice:

[NOTICE: THIS CONTRACT OFFERS, FOR AN ADDITIONAL CHARGE, A COLLISION DAMAGE WAIVER TO COVER YOUR RESPONSIBILITY FOR DAMAGE TO THE VEHICLE. BEFORE YOU DECIDE WHETHER TO PURCHASE THE COLLISION DAMAGE WAIVER PRODUCT, YOU MAY WISH TO DETERMINE WHETHER YOUR OWN VEHICLE INSURANCE AFFORDS YOU COVERAGE FOR DAMAGE TO THE RENTAL VEHICLE AND THE AMOUNT OF THE DEDUCTIBLE UNDER YOUR OWN INSURANCE COVERAGE. THE PURCHASE OF THIS COLLISION DAMAGE WAIVER PRODUCT IS NOT MANDATORY AND MAY BE DECLINED.] **OPTIONAL PRODUCTS NOTICE: OUR CONTRACT OFFERS FOR AN ADDITIONAL CHARGE OPTIONAL PROTECTION PRODUCTS. BEFORE DECIDING WHETHER TO PURCHASE ANY OF THESE OPTIONAL PRODUCTS, YOU MAY WISH TO DETERMINE WHETHER YOUR PERSONAL INSURANCE OR CREDIT CARD PROVIDES YOU COVERAGE DURING THE RENTAL PERIOD. THE PURCHASE OF ANY OF THESE OPTIONAL PRODUCTS IS NOT REQUIRED TO RENT A VEHICLE.**

Such notice shall be made on the face of the rental agreement as part of the written contract, shall be set apart in boldface type and in no smaller print than 10-point type, and shall include a space for the consumer to acknowledge his **or her** receipt of this notice.

5. The car rental company shall also post at the rental office a sign that is clear and conspicuous and informs the consumer about collision damage waiver, optional car rental insurance, and other optional products. The following language may be used to comply with the requirements of this section, but shall not be considered the exclusive language that may be used:

OPTIONAL PRODUCTS NOTICE:

Our contract offers for an additional charge optional products which provide you protection during your rental, including:

1. Collision Damage Waiver: You are responsible for all damages to or loss of the rental vehicle. A Collision Damage Waiver will relieve you of responsibility for all or part of the damage to the rental vehicle that may occur during the rental period.

2. Personal Accident Insurance: Personal Accident Insurance provides accidental death and accident medical insurance that protects you during the

rental period in or out of the rental vehicle and your passengers while in the rental vehicle.

3. Personal Effects Coverage: Personal Effects Coverage protects your possessions from loss or damage during the rental period.

4. Liability Insurance: Liability Insurance provides protection to cover injuries or death to third parties or damage to a third party's property if you are at fault in an accident with the rental vehicle during the rental period.

Any time during the rental period you may add or remove any of these optional products by bringing the rental vehicle and your rental agreement to any of the car rental company's locations.

For a complete description of these optional products, including the benefits and exclusions, please see your rental agreement.

Before deciding to purchase any of these optional products, you may wish to determine whether your personal insurance or credit card provides you coverage during the rental period.

The purchase of any of these products is not required to rent a vehicle.

6. Car rental companies shall not place a hold against a consumer's credit limit or charge a consumer's credit card in a deceptive or unfair manner, and without full and complete disclosure of such practice.

7. Any car rental company that is found after notice and hearing to have violated or attempted to violate any provision of this section shall be subject to a fine of fifty dollars for each violation. Each issuance, procurement, or negotiation of a single collision damage waiver in violation of this section shall be deemed a separate violation. No fine or fines shall be imposed against a car rental company under this section which in the aggregate exceeds ten thousand dollars in any calendar year.

Copy